

therefore, continue to inculcate as a government the widest dissemination of intelligence among the people, respect for public and private virtue and faithful obedience to the laws. The executive, legislative and judicial departments of the State government are utterly powerless in their execution of the laws for the preservation of public order and the punishment of crime, unless fearlessly supported in their high places. Codes and courts, laws and law-makers, are but things of straw before the breath of the mob, unless sustained by the virtue and iron heroism of a free people.

In conclusion, my fellow-citizens, I cannot permit this occasion to pass away from the memory of men without invoking a renewed devotion on this anniversary year to our common country. In the spirit of patriots and statesmen, let us remember that, notwithstanding the bitter memories of the past—its quarrels and estrangements—we are still *one* people, descended from the same great ancestry, speaking the same language and inheriting the same love for liberty; and should go forward, hand in hand, to meet the same glorious destiny. It is true that the fierce war from which we have emerged as from a furnace, cut down the best and bravest of our comrades and brothers, our sires and sons of either section. But they died not in vain. Whether wearing the blue or wearing the grey, their lives were offered up freely as libations of water, for what each dying soldier deemed for the *right* and for *native land*. In their graves, made immortal by the same ancestral heroism of race and of blood, let us bury the feuds of that stormy hour of our history. In this generous and knightly spirit, Texas to-day sends fraternal greeting to her sister States of the Union.

The inaugural ceremonies having been completed, the Senate returned to its chamber.

IN SENATE.

Roll called. Quorum present.

The Special Committee introduced Hon. R. B. Hubbard, Lieutenant-Governor elect and President of the Senate, who addressed the Senate briefly and took the chair.

On motion of Mr. Crain, the Senate adjourned to 10 o'clock A. M., tomorrow.

SEVENTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, April 26, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Rev. John F. Hillyer, of Giddings.

Journal of yesterday read and adopted.

On motion of Senator Thompson, Senator McCulloch was excused for the day on account of sickness.

On motion of Senator Piner, Senator Smith was excused for the day on account of sickness.

Senator Brady presented a memorial from Merrick and Durant, of Washington City, and asked that it be read.

A message was received from the Governor.

The memorial of Messrs. Merrick and Durant, presented by Senator Brady, was read and referred to Judiciary Committee No. 1.

On motion of Senator Piner, the Governor's message was taken up and read as follows:

EXECUTIVE OFFICE, STATE OF TEXAS,
AUSTIN, April 26, 1876. }

Hon. R. B. Hubbard, President of the Senate:

SIR—I have the honor to present herewith for consideration of the honorable Legislature the report of Hon. D. C. Giddings, containing a detailed statement of the settlement made by him with parties in England and Germany, holding adversely to the State a large number of five (5) per cent. United States indemnity bonds, abstracted from the Treasury of the State during the late civil war.

The records of this office disclose a history of the efforts of my predecessors for the recovery of these bonds, commencing with the sending by A. J. Hamilton, Provisional Governor in 1865, of Hon. M. C. Hamilton to Europe for that purpose; the subsequent employment by Governor Throckmorton of the Hon. B. H. Epperson, with a contingent fee of twenty-five (25) per cent. of the amount he might realize for the State; and afterwards the employment by Governor Davis of Messrs. R. T. Merrick and T. J. Durant, with a contingent fee of twenty (20) per cent. of the amount actually realized by them under judicial process. Under these different employments several suits were instituted and prosecuted in the courts at Washington, and the sum of \$47,325.99 coin, was actually recovered and paid to George W. Paschal, then one of the attorneys for the State. None of this money ever reached the Treasury of the State, Judge Paschal having paid to the firm of which R. T. Merrick is a member, \$14,674.98, and retained the balance as a fee. During the eleven years which have elapsed since the first effort was made for the recovery of these bonds, not a dollar has ever been realized for the State until Col. Giddings went to Europe and made the settlement detailed in his report.

A statement from the office of the Comptroller, showing the payment into the Treasury of the amount reported paid by Col. Giddings, is herewith presented. The authority under which Col. Giddings acted was conferred by the Executive, in virtue of the act of October 30, 1866, on this subject, and in pursuance of the same act the compensation for the services of Col. Giddings, as well as for those of Messrs. R. T. Merrick and T. J. Durant, counselors and attorneys, at Washington, was fixed and paid. Col. Giddings was allowed and paid \$31,216.42, and Messrs. Merrick & Durant, having heretofore been paid on the same general account \$16,628.98, were allowed and paid an additional sum of \$8,000. Col. Giddings' fee was contingent upon his success, and all his expenses, reported at \$4,000, paid by himself. The receipts of these gentlemen, being a full acquittance of the State from all further responsibility for or on account of their services, were taken in triplicate, and are on file in the Executive and Comptroller's offices, and in the office of the Treasurer, a copy being herewith transmitted. Messrs. Merrick & Durant having differed with me as to the proper amount of their compensation, it was left to their choice to settle on the terms which I believed right, or leave the matter to be adjusted by the Legislature. They preferred the former course, and the settlement was accordingly made. A copy of a letter written to those gentlemen, giving the reasons for my action, is transmitted herewith for your information. My convictions are clear

that these gentlemen have been liberally paid for their services, while their receipts on file are a perfect legal discharge to the State. The fee paid Col. Giddings is a small fraction over nine per cent. on the amount realized, and this, together with the amount paid Messrs. Merrick & Durant, makes about twelve per cent. which it has cost the State to put the money in her Treasury, as reported by Col. Giddings. The bonds, being due, were collected by my instructions, and the gold converted into currency ready for investment, it belonging to the permanent school fund, and it being deemed advisable not to bring the gold to Texas, when a sale of it would necessarily have to be made, and gold was then bringing a very large premium, as the account of sales in the report will show.

I cannot close this report without expressing the conviction that the State is indebted to the prompt and vigorous action of Col. Giddings for the large amount of money realized, and that her rights would most probably have been lost by limitation, or rendered valueless by the expense of their prosecution, had any other course been pursued than that adopted by him.

Twenty-one of the Texas indemnity bonds, belonging to the State, are in the hands of unknown parties, who have never presented them for payment at the Treasury of the United States. The rights of the State have been protected as far as possible in them by my predecessors in office by filing notice of the State's claim, and the Texas delegation in Congress have been requested to take such additional steps, if any be necessary, as will ultimately secure the rights of the State.

Very respectfully,

RICHARD COKE.

EXECUTIVE OFFICE, STATE OF TEXAS, }
AUSTIN, December 30, 1875. }

Messrs. R. T. Merrick and Thos. J. Durant, Washington, D. C.:

GENTLEMEN—Your communication of November 8 came during my absence from the capital, and in consequence of the mass of business accumulated in the office during that time has not been attended to before. I have to say in reply: When I came into office nearly two years ago, I found that nothing had been realized for the State from the various suits theretofore and then pending in her behalf for recovery of the Texas indemnity bonds taken from her Treasury during the late civil war, while the bonds, or their proceeds, were in the hands of parties residing in foreign countries beyond the jurisdiction of the courts where the suits were pending, and unaffected by any judgments that might be rendered therein. Repeated experiments by mail failed to bring any reply from these parties, or to obtain recognition of any sort, showing that they felt safe as long as no other steps were being taken than those then and since initiated by you. I became impressed with the conviction that something must be done to prevent loss of the rights of the State in the subject matter of these suits against the parties in Europe holding the bonds and money in actual adverse possession. Twelve years, or thereabouts, having elapsed since the State lost her possession, I feared that limitation might cut some figure in the matter if allowed to rest longer in that condition. I accordingly employed Messrs. J. D. & D. C. Giddings, as the agents of the State, to take hold of the matter, and, if necessary, to go to Europe to look after her interests. These gentlemen went to work under my instructions,

and, after acquiring such information as was necessary to enable them to pursue the matter intelligently, and with prospects of success in Europe, Col. D. C. Giddings went and recovered possession of bonds, coupons and money, the proceeds of all which aggregated a small fraction over \$339,000. I have no doubt but that your services at Washington conduced very materially to the success of Col. Giddings' mission to Europe, but believe if he had not gone that your legal proceedings in Washington would never have realized to the State one dollar of the large amount which, at his own risk and cost, and for a fee dependent entirely upon his success, Col. Giddings has recovered, brought to Austin and paid into the Treasury. And it is worthy of remark here that of all the numerous agents and attorneys who have represented the State in the prosecution of these claims not one of them has ever brought or sent one dollar to the State's Treasury before. The records of this office show that heretofore, under my predecessor's administration, \$47,325 (coin) of the State's claim for abstracted bonds have been recovered and paid to attorneys representing the State, and that of this amount, which was received by Judge Paschal, there was paid in currency to Brent, Merrick & Taylor, attorneys, the sum of \$14,674.98, Judge Paschal claiming and retaining the balance as a fee. In view of these facts, I instructed Col. Giddings to bring to Austin all the funds he might recover, so that the State authorities might make such a settlement with the attorneys as would be deemed just, and not have another settlement dictated to them. I disclaim any imputation upon you, gentlemen, and mean simply to say that I intended it should not be in the power of any one to do the State an injustice in the settlement of this matter.

You claim in the letter written to Col. Giddings, a copy of which you enclose me, that you are entitled under the contract with ex-Governor Davis to twenty per cent. of the money collected; or \$67,800. This, in addition to the \$14,674.98, mentioned above as paid your Mr. Merrick's firm by Judge Paschal, would make \$82,474.98.

I have examined that contract carefully and cannot admit the justice of the claim; not one dollar has been realized or collected under or in virtue of any judgment rendered in any judicial proceeding ever instituted for the bonds or the money claimed by the State, except that mentioned above as having been received by Judge Paschal. At the last session of Congress you attempted to get passed a bill authorizing the payment by the United States Treasurer of the bonds adversely held in Europe, to the Governor of Texas, but failed. The truth is, all the bonds and money recovered and collected in Europe by Col. Giddings were beyond the jurisdiction of the courts in which your proceedings were being conducted, as were the parties holding them, and consequently unaffected by the judgment, if any such were rendered; and your attempt to get the bill alluded to through Congress shows very clearly that all the judicial proceedings had failed to realize anything for the State, and there can be no doubt that, had no other steps been taken, the State, from lapse of time, death or bankruptcy of the adverse holders, would have lost her rights. I did not feel that the State was required to await the result of judicial or other proceedings which seemed interminable, and take the hazard of these results; and accordingly pursued the course already stated, which has settled the matter and placed the money in the Treasury.

Your contract with ex-Governor Davis entitles you to twenty per cent. of all money realized and collected by judicial procees. Not one dollar as before stated has been collected in that way, or as I believe ever would have been; but as you have labored for the State, and being satisfied that the judicial proceedings conducted by you exerted a moral influence in aid of Col. Giddings' direct efforts upon the holders of the bonds and money in Europe, I believe that you should be fairly paid the value of your services, and in determining what should be paid you now, I take into the estimate what you have already received from the State on the same general account, because all the suits grew out of the same cause. I find from the records of this office that there was paid to Mr. Merrick's firm by Judge Paschal, in June, 1869, for services in the White & Chiles case \$3,450, and that Judge Paschal paid to the same firm \$11,224.98 in December following, in the Hardenburg case; these sums being twenty-five per cent. on the amounts recovered in accordance with the contract made and approved by Governor Throckmorton with Hon. B. H. Epperson. In addition, I find that \$1,954 was paid, principally in advance, by ex-Governor Davis, in and about the same matters, to Mr. Durant.

These amounts, aggregating \$16,628.98, you have already received. I propose to pay you now, out of the money collected by Col. Giddings, \$8,000, which, with that heretofore paid you, will make a total of \$24,628.98. I have paid to Col. Giddings \$31,216.42. He reports to me his expenses at \$4,000, which, when deducted from the amount, leaves \$27,216.42.

With reference to the private understanding alleged by you to exist between yourselves and Col. Giddings, as to a division of the fee, I know nothing. He informs me that no such agreement or understanding has ever existed. This is a matter to be settled between yourselves, in which the State has no interest. After the performance of valuable service for the State, Col. Giddings demanded that his compensation be fixed and paid, which has been done. His fee as paid is a very small fraction over nine per cent. of the amount collected, including his bill of expenses. I believed this a just and reasonable compensation, in view of the benefits received by the State, and the labor, time and money expended, altogether at his own risk, by Col. Giddings. I also believe that the amount fixed for your compensation and tendered you, in view of your contract, and the benefits received by the State from your services, is fully as liberal as that paid Col. Giddings. If I am in error about this, and you are entitled to the balance of twenty per cent. stipulated for in the contract with Governor Davis, on the amount collected by Col. Giddings, and paid into the State Treasury, after deducting what has been paid Col. Giddings, a conclusion from which I utterly dissent, your remedy is plain and easy in an application to the Legislature to fix and have your fee paid. I will, when that body meets in April next, make a full report of all that has been done with reference to this matter.

Regretting that any misunderstanding should have arisen with reference to this settlement, I have to say in conclusion that I have, as you have been heretofore advised, on special deposit, subject to my order, in the Treasury of the State, \$8,000, which I will pay over to you on your order, when your triplicate receipts are presented to me for that amount, acknowledging the same to be in full for all services rendered the State in and about the recovery of the Texas indemnity bonds, or their proceeds,

or anything connected with or growing out of that subject. If you shall decline, as your letter seems to indicate, to accept this settlement, and appeal from my decision to the Legislature, I will pay the \$8,000 mentioned into the Treasury of the State, and leave that body to settle the entire matter with you. In other words, if I settle with you at all, the settlement, so far as the State's liability is concerned, must be conclusive and a finality. If the Legislature are to settle it I propose to leave the matter untouched, so that their action may not be embarrassed by anything that I have done. Very respectfully, your obedient servant,

(Signed)

RICHARD COKE.

P. S.—You ask me especially as to statements made by Col. Giddings when I settled with him. I have to state in reply that those statements consisted of a detailed account of various and complicated difficulties he encountered in Europe in bringing on a settlement, and the fact that his legitimate expenses in prosecuting the claim to a conclusion amounted to four thousand dollars.

Received, Austin, January 21, 1876, from His Excellency, Richard Coke, Governor, the sum of eight thousand dollars, "acknowledging the same to be in full of all demands against the State in and about the recovery of the Texas indemnity bonds or their proceeds."

(Signed)

THOMAS J. DURANT,

\$8000.

(Signed)

R. T. MERRICK.

A true copy of the original receipt now on file in the Executive Office
GEO. T. DASHIELL, Private Sec'y.

AUSTIN, April 26, 1876.

Senator Crain moved that a thousand copies of the message and accompanying documents be printed.

Senator Brady moved to add the memorial and accompanying documents of Messrs. Merrick and Durant.

Senator Ledbetter moved that the whole matter be postponed to Wednesday next.

Lost.

Senator McLeary moved to refer the motion to print message and accompanying documents to Judiciary Committee No. 1.

Lost.

The motion made by Senator Brady that a thousand copies of the memorial of Messrs. Merrick and Durant be printed was lost by the following vote:

YEAS—Senators Brady, Brown, Burton, Carroll, Crain, Ford, Hobby, McLeary, McCormick, Ripetoe, Terrell—11.

NAYS—Senators Ball, Blassingame, Douglass, Edwards, Francis, Grace, Guy, Henry of Limestone, Henry of Cass, Ledbetter, Martin, Moore, Motley, Piner, Stephens, Storey, Thompson, Wortham—18.

Senator Storey moved to amend Senator Crain's amendment by striking out one thousand copies and inserting one hundred and fifty.

Accepted.

The motion as amended was adopted.

On motion of Senator Piner the message and accompanying documents were referred to Judiciary Committee No 1.

Senator Crain, for Judiciary Committee No. 2, submitted the following report:

ARCHIVES

Hon. R. B. Hubbard, President of the Senate:

Your Judiciary Committee No. 2, to whom were referred Senate Bill No. 9, entitled: "An Act to amend Article 771 of the criminal code," and Senate Bill No. 24, entitled: "An Act to amend Article 771 of the criminal code," have had the same under consideration, and have instructed me to report the same back to the Senate, with the accompanying substitute for both bills, and recommend that said substitute do pass.

CRAIN, *for Committee.*

The said substitute has the following caption: "An Act to amend Article 771 of an act to adopt and establish a penal code for the State of Texas," approved August 28, 1856.

Senator Guy, Chairman Committee on Contingent Expenses, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Contingent Expenses, to whom was referred accompanying Senate bill, to be entitled: "An Act making an appropriation to defray the contingent expenses of the first session of the Fifteenth Legislature," have had the same under consideration, and instruct me to report the same back with the recommendation that Section 2 of said bill be amended so as to read as follows:

SEC. 2. "That a necessity exists which requires that said appropriation be made immediately, so as to meet the current expenses of the Legislature, and that this act take effect from and after its passage;" and recommend that the bill, as amended, do pass.

Senator Carroll introduced a bill entitled: "An Act prescribing the mode of proceeding in District Courts, in matters of probate," approved August 15, 1870.

Read first time and referred to Judiciary Committee No. 2.

On motion of Senator Edwards, a bill entitled: "An Act to regulate the mode of proceedings and practice in civil cases in the District Courts of the State," was transferred from Judiciary Committee No. 2 to Judiciary Committee No. 1.

On motion of Senator Douglass, Senator Moore was added to the Committee on Internal Improvements.

On motion of Senator Thompson, Senator Smith was added to the Committee on State Penitentiaries.

Senator Terrell offered the following resolution:

Resolved, That the teachers of St. Mary's Academy, in Austin, be permitted to occupy the Senate chamber from 9 o'clock A. M. to 9:30 A. M., on May the 4th, with the young ladies of the Academy, for the coronation of a May Queen.

Adopted.

The Senate then proceeded to the consideration of the special order, viz:

Senate Bill No. 25: "To organize the Court of Appeals."

Bill read second time.

Senator Piner moved to refer the bill to Judiciary Committee No. 1.
Lost.

Senator Edwards offered the following amendment:

Amend Section 10 so as to read as follows: "That there being no law in force to enable said court and judges thereof to proceed with their labors and duties as prescribed in the Constitution, an emergency exists

that this bill shall, and it is hereby declared that this bill take effect from and after its passage."

Senator Piner moved to strike out Section 9.

Lost.

On motion of Senator McLeary, blank in Section 6 was filled with the word, "three."

Senator Brown offered the following amendment to the preamble:

After the word, "necessity," insert the words, "an emergency."

Adopted.

Senator Crain offered the following amendment:

Strike out the preamble and amend Section 10 by inserting: "That as an important public necessity and emergency exist for immediate legislation to organize the Court of Appeals, that it may at once hear and determine criminal and other causes, exclusively cognizable on appeals in said court, that this act take effect from and after its passage."

Lost, and bill ordered to be engrossed.

Senator Storey moved a suspension of the rules to place the bill upon its third reading and final passage.

Carried by the following vote:

YEAS—Senators Ball, Blassingame, Burton, Brady, Brown, Carroll, Crain, Douglass, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCormick, Moore, Motley, Piner, Ripetoe, Stephens, Storey, Terrell, Thompson and Wortham—29.

NAYS—None.

The bill then passed by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Brown, Burton, Carroll, Crain, Douglass, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCormick, Moore, Motley, Piner, Ripetoe, Stephens, Storey, Terrell, Thompson and Wortham—29.

NAYS—None.

On motion of Senator Moore, the Senate adjourned until to-morrow morning at 10 o'clock.

EIGHTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, April 27, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday read and adopted.

The Chairman announced that Senator Ford was added to Committee on Judiciary No. 2.

On motion of Senator McLeary, Senator Ledbetter was added to Committee on Privileges and Elections.

A message was received from the Governor.

Senator Hobby, Chairman of Judiciary Committee No. 1, submitted the following reports:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Judiciary No. 1, to whom was referred Senate Bill No. 11, entitled: "A bill to be entitled: 'An Act to provide for revising, digesting and publishing the laws, civil and criminal, of the State of Texas;'" have had the same under consideration, and instruct